

FINAL AWARD DENYING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 08-089380
MFD No.: 08-01223

Employee: Lester Taylor
Employer: Penmac Personnel Services, Inc.
Insurer: Ace American Insurance Co.
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated December 19, 2012, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge L. Timothy Wilson, issued December 19, 2012, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 16th day of May 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T
Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Lester Taylor Injury No. 08-089380
Dependents: N/A MFD No. 08-01223
Employer: Penmac Personnel Services, Inc.
Insurer: Ace American Insurance Co.
Additional Party: Treasurer of Missouri, as the Custodian of the Second Injury Fund
Health Care Provider: Lester E. Cox Medical Center
Hearing Date: September 17, 2012 (Evidentiary Record Closed: October 16, 2012) Checked by: LTW

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: August 29, 2008
5. State location where accident occurred or occupational disease was contracted: Greene County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: While engaged in employment with Employer, Employee was working with a co-worker, who was driving a bus and Employee was sitting in the front seat. As this co-worker made a turn, he cut the corner too tightly and caused the bus to travel into a ditch or culvert. Employee fell out of his seat and onto the floor. The co-worker continued to proceed uninterrupted to the destination. Upon arrival, Employee got off the bus and expressed concern that his feet had become numb and was experiencing pain in his low back.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: Low Back (This injury was of a transient nature and did not result in any permanent injury.)
14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: None

- 16. Value necessary medical aid paid to date by employer/insurer? \$5,146.76
- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: 165.87
- 19. Weekly compensation rate: \$200.00 (PPD / PTD) & \$110.58 (TTD)
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

- 21. Amount of compensation payable:
 - Unpaid medical expenses: None
 - Weeks of temporary total disability (or temporary partial disability): None
 - Weeks of permanent partial disability from Employer / Insurer: None
 - Weeks of disfigurement from Employer / Insurer: N/A
 - Permanent total disability benefits from Employer beginning, for Claimant's lifetime: None
- 22. Second Injury Fund liability: None

TOTAL: None (See Award.)

- 23. Future requirements awarded: N/A

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Lester Taylor

Injury No. 08-089380

Dependents: N/A

MFD No. 08-01223

Employer: Penmac Personnel Services, Inc.

Insurer: Ace American Insurance Co.

Additional Party: Treasurer of Missouri, as the Custodian of the Second Injury Fund

Health Care Provider: Lester E. Cox Medical Center

The above-referenced workers' compensation claim was heard before the undersigned Administrative Law Judge on September 17, 2012. The evidentiary record was left open for 30 days in order to afford the parties opportunity to submit additional evidence. Further, the parties were afforded an opportunity to submit briefs or proposed awards, resulting in the record being completed and submitted to the undersigned on or about October 16, 2012.

The employee appeared personally and through his attorney, Randy Alberhasky, Esq. The employer and insurer appeared through their attorney, Robin Bullock, Esq. The Second Injury Fund appeared through its attorney, Skyler Burks, Assistant Attorney General. The Health Care Provider, Lester E. Cox Medical Center, appeared through its attorney, Jason Shaffer, Esq.

Dismissal of Medical Fee Dispute No. 08-01223

The Health Care Provider, Lester E. Cox Medical Center, filed an Application for Direct Payment with the Missouri Division of Workers' Compensation in regard to certain health care it provided for the employee, Lester Taylor, in regard to the above-referenced claim. The Division of Workers' Compensation assigned to this medical fee dispute file Medical Fee Dispute No. 08-01223, and scheduled the medical fee dispute file for evidentiary hearing with the scheduling of the underlying claim, which resulted in the parties proceeding to evidentiary hearing on September 17, 2012.

On September 17, 2012, the Health Care Provider, Lester E. Cox Medical Center, by counsel, and prior to the commencement of the evidentiary hearing, filed a Request for Dismissal of Application for Direct Payment. Without objection, this request was filed on grounds that the health care provided by the Health Care Provider was not authorized by the employer and insurer. In light of the foregoing, Medical Fee Dispute No. 08-01223 is dismissed at the request of the Health Care Provider, Lester E. Cox Medical Center.

Stipulations

The parties entered into a stipulation of facts. The stipulation is as follows:

- (1) On or about August 29, 2008, Penmac Personnel Services, Inc. was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Ace American Insurance Co.
- (2) On the alleged injury date of August 29, 2008, Lester Taylor was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (3) On or about August 29, 2008, the employee, Lester Taylor, sustained an accident, which arose out of and in the course of his employment with the employer, Penmac Personnel Services, Inc.
- (4) The above-referenced employment and accident occurred in Greene County, Missouri. The parties agree to venue lying in Greene County, Missouri. Venue is proper.
- (5) The employee notified the employer of his injury as required by Section 287.420, RSMo.
- (6) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (7) At the time of the alleged accident of August 29, 2008, the employee's average weekly wage was \$165.87, which is sufficient to allow a compensation rate of \$110.58 for temporary total disability compensation, and a compensation rate of \$200.00 for permanent partial/total disability compensation.
- (8) Temporary disability compensation has not been provided to the employee.
- (9) The employer and insurer have provided medical treatment to the employee, having paid \$5,146.76 in medical expenses.
- (10) The employee's prior attorney, E. Joseph Hosmer, Esq., possesses an attorney's lien in this case in the amount of \$1,638.58. Also, beyond this lien, the employee's present attorney asserts an attorney's fee or lien in the amount of 25 percent of all benefits ordered to be paid.

The issues to be resolved by hearing include:

- (1) Whether the employer and insurer are obligated to pay for certain past medical care and expenses?
- (2) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee from the effects of the injuries?
- (3) Whether the employee is entitled to temporary total disability compensation?
- (4) Whether the employee sustained any permanent disability as a consequence of the alleged accident August 29, 2008; and, if so, what is the nature and extent of the disability?
- (5) Whether the Treasurer of Missouri, as the Custodian of the Second Injury Fund, is liable for payment of wage loss benefits, as allowed in Section 287.220.9, RSMo?

EVIDENCE PRESENTED

The employee testified at the hearing in support of his claim. Also, the employee presented at the hearing of this case the testimony of his daughter, Mary Jane Norstad. In addition, the employee offered for admission the following exhibits:

Exhibit A.....Medical & Billing Records from Back in Motion
Exhibit B.....Medical Records from Branson West Medical Care
Exhibit C.....Medical Records from Burrell Behavior Health
Exhibit D.....Medical Records from Burrell Behavior Health
Exhibit E.....Medical Records from Cox Medical Center (Certified 01-23-2006)
Exhibit F.....Medical Records from Cox Medical Center (Certified 12-09-2010)
Exhibit G.....Medical Records from Cox Medical Center (Certified 12-10-2010)
Exhibit H.....Medical Records from Cox Medical Center (Certified 09-06-2011)
Exhibit I.....Record from Missouri Division of Vocational Rehabilitation
Exhibit J.....Medical Records from Peak Performance
Exhibit K.....Medical Records from St. John's Clinic-Occupational Medicine
Exhibit L.....Medical Records from St. John's Health Center
Exhibit M.....Medical Records from Skaggs Community Health Center
Exhibit N.....Medical Records from VA Medical Center-Fayetteville, Arkansas
Exhibit O.....Medical Records from Center for Advanced Pain Management
Exhibit P.....Pharmacy Records from Walgreen's Pharmacy
Exhibit Q.....Medical Bills from Cox Medical Center
Exhibit R.....Medical Bills from Ozarks Anesthesia
Exhibit S.....Medical Bills from RS Medical
Exhibit T.....Psychological Report from Dale Halfaker, Ph.D.
Exhibit U.....Claim for Compensation
Exhibit V.....Answer of SIF to Claim for Compensation

Exhibit W Answer of Employer/Insurer to Claim for Compensation
Exhibit X Letter of Disclosure of Medical Records to SIF (12-22-2010)
Exhibit Y Letter of Disclosure of Medical Records to SIF (12-29-2010)
Exhibit Z Letter of Disclosure of Medical Records to Opposing Counsel
(02-08-2011)
Exhibit AA Letter of Disclosure of Medical Records to Opposing Counsel
(12-19-2011)
Exhibit BB Letter of Disclosure of Medical Records to Opposing Counsel
(07-23-2012)
Exhibit CC Letter of Disclosure of Medical Records to Opposing Counsel
(07-27-2012)
Exhibit DD Deposition of Lester Taylor
Exhibit EE Deposition of P. Brent Koprivica, M.D.
Exhibit FF Not Offered
Exhibit GG Not Offered
Exhibit HH Wage Statement
Exhibit II Stipulation for Compromise Settlement B/T Employee & Employer /
Insurer (Injury No. 05-102495)
Exhibit JJ Stipulation for Compromise Settlement B/T Employee & SIF (Injury
No. 05-102495)

The exhibits were received and admitted into evidence.

The employer and insurer presented no witnesses at the hearing of this case. However, the employer and insurer offered for admission the following exhibits:

Exhibit 1 Deposition of Jeffrey Woodward, M.D.
Exhibit 2 Deposition of Ronald Pak, M.D.
Exhibit 3 Letter from Employer to Employee (Dated September 4, 2008)

The exhibits were received and admitted into evidence.

The Second Injury Fund did not present any witnesses at the hearing of this case. However, the Second Injury Fund offered for admission the following exhibits:

Exhibit I Stipulation for Compromise Settlement B/T Lester Taylor &
The Daniel Company of Springfield, Inc. / MEMIC (Injury No. 05-024256)
Exhibit II Stipulation for Compromise Settlement B/T Lester Taylor &
The Daniel Company of Springfield, Inc. / MEMIC (Injury No. 05-102495)
Exhibit II Stipulation for Compromise Settlement B/T Lester Taylor &
SIF (Injury No. 05-102495)
Exhibit IV Addendum to Stipulation for Compromise Lump Sum Settlement
B/T Lester Taylor & SIF (Injury No. 08-089380)
Exhibit V Life Tables Document filed in Injury No. 08-089380
Exhibit VI Deposition of James England, Jr., CRC
Exhibit VII Deposition of Lester Taylor (February 4, 2011)

The exhibits were received and admitted into evidence.

In addition, the parties identified several documents filed with the Division of Workers' Compensation, which were made part of a single exhibit identified as the Legal File. The undersigned took administrative or judicial notice of the documents contained in the Legal File, which include:

- Request for Dismissal of Application for Direct Payment
- Notice of Hearing
- Minute Entry
- Objection to Case Being Set for Final Hearing
- Request for Hearing-Final Award
- Lien for Attorney's Expenses (filed by E. Joseph Hosmer, Esq.)
- Application for Direct Payment (MFD No. 08-01223)
- Answer of Second Injury Fund to Claim for Compensation
- Answer of Employer/Insurer to Claim for Compensation
- Claim for Compensation
- Report of Injury

All exhibits appear as the exhibits were received and admitted into evidence at the evidentiary hearing. There has been no alteration (including highlighting or underscoring) of any exhibit by the undersigned judge.

DISCUSSION

Background & Employment

The employee, Lester Taylor, is 66 years of age, having been born on April 11, 1944. Mr. Taylor resides in Springfield, Missouri.

Mr. Taylor attended but did not graduate from high school. He later served as a paratrooper in the United States Army from 1965 to 1967. Subsequent to his military service, Mr. Taylor received an honorable discharge.

In 2002 Mr. Taylor obtained a G.E.D. During his lifetime he has engaged in multiple employments such as at a meat packing plant, in a foundry, as a mechanic, managing a trailer park and driving a truck.

From 2006 to 2008 he was off work and received social security disability compensation. In June of 2008, Mr. Taylor obtained employment with the employer, Penmac, working 15-20 hours a week as a bus driver. In securing this employment, Mr. Taylor was required to take a preemployment physical. He continued in this employment through the date of the accident, and then never returned to work.

Prior Medical Conditions

Prior to sustaining the work injury of August 29, 2008, Mr. Taylor suffered several injuries and/or medical conditions, which caused him to present with certain permanent disability. These prior medical conditions include:

- Low Back: At age 17 Mr. Taylor was involved in a motor vehicle accident that caused him to sustain an injury to his low back.
- Head, Neck, Right Shoulder, Psychological (Mental): In or around February 1998 Mr. Taylor was involved in a motor vehicle accident that caused him to sustain injuries to his head, neck and right shoulder. Additionally, this incident caused Mr. Taylor to experience certain psychological overlay and/or psychological dysfunction.

In April 1999 Mr. Taylor treated with Dr. Hauffman, presenting with complaints of paresthesias. This treatment resulted in Mr. Taylor receiving a referral to Dr. Cornelison, who felt Mr. Taylor presented with evidence of significant psychological dysfunction following the motor vehicle accident of February of 1998. In describing the nature of this motor vehicle accident and the effect it had on Mr. Taylor, it was noted that the motor vehicle accident occurred when a vehicle coming toward Mr. Taylor experienced a tire blowout, causing the vehicle to slide and hit Mr. Taylor's vehicle at the side of the trailer, and further causing debris to hit Mr. Taylor's cab.

Subsequent treatment for injuries associated with this motor vehicle accident, in May 1999, resulted in Mr. Taylor being evaluated by Dr. Shaheen, and diagnosed with Axis I diagnoses of major depression with anxiety, post-traumatic stress disorder and somatoform pain disorder.

In July 2000 Mr. Taylor underwent an evaluation with Dale Halfaker, Ph.D., who is a licensed psychologist associated with Neuropsychological Associates of Southwest Missouri, P.C. Based on this evaluation, Dr. Halfaker diagnosed Mr. Taylor with Axis I diagnoses of moderate major depression, chronic PTSD and pain disorder; Axis II diagnoses that included borderline intellectual functioning, obsessive compulsive, historic and progressive aggressive personality traits; and an Axis III diagnosis that included chronic neck and back pain. Additionally, Dr. Halfaker felt there was a GAF of 51 percent on July 18, 2000.

He continued to experience severe shoulder pain and neck pain. In February 2002, he presented to the emergency room of Cox Medical Center with such complaints, including complaints of limited range of motion, but denied any numbness, tingling or weakness. An MRI study revealed disc bulging on the right of the cervical spine at the levels of C5-C6 and C6-C7, with impingement on the thecal sac. A CT myelogram showed a defect on the right at C6-C7 in the lateral recess, which appeared to correlate with the defect seen on myelography. In light of these positive diagnostic studies, on or about February 4, 2002, Mr. Taylor underwent a microdiscectomy and fusion of the cervical spine at the level of C6-C7.

In or around March 2005, Mr. Taylor suffered another motor vehicle accident when a co-worker came to a sudden stop, throwing Mr. Taylor from the top bunk. This incident caused Mr. Taylor to suffer further injury to his neck. An MRI scan of the cervical spine taken subsequent to this event evidenced focal disk protrusion of the cervical spine at the level of C5-C6, resulting in effacement of the exiting left nerve root sheath and mild mass effect upon the thecal sac. Additionally, this diagnostic study revealed neural foraminal narrowing.

Not too long thereafter, in or around July 2005, Mr. Taylor became involved in a physical altercation involving another driver who physically assaulted him. This incident resulted in him seeking medical care in the emergency room of Cox Medical Center, presenting with complaints of pain in his head, neck and right arm. Additionally, it was noted that his range of motion was decreased, and was noted to have muscle spasm on exam. He was diagnosed with acute myofascial strain.

Throughout 2005, and continuing into 2006, Mr. Taylor continued to suffer persistent problems associated with neck pain and depression, and received treatment under the workers' compensation system. In March 2006, Mr. Taylor received a medical release from treatment by the treating physician selected by the employer and insurer in his workers' compensation case. Notably, at the time of this release, it was noted that Mr. Taylor appeared agitated, and was reporting symptoms of feeling nervous, shaky and moody, as well as complaining of rib pain.

In July 2006, Mr. Taylor received a psychiatric evaluation through Burrell Behavioral Health Center. This referral was associated with a history of suffering depression, secondary to having been physically attacked in his truck several years ago, with a long standing history of depression. Later, in September 2006, Mr. Taylor presented to the emergency room of Cox Medical Center with generalized chronic recurrent pain.

In May 2007, Mr. Taylor received treatment through the Veterans Administration. Through this treatment Mr. Taylor was diagnosed with bilateral shoulder tendonitis, and resulted in him being given steroid injections. Through 2007, and continuing into 2008, Mr. Taylor suffered significant disability associated with chronic neck pain, depression and PTSD.

- Right Wrist / Left Thumb: The March 2005 motor vehicle accident caused Mr. Taylor to suffer not only a reinjury to his cervical spine, but to sustain a dorsal fracture of the right wrist as well as degenerative joint disease involving the left thumb carpal-metacarpal joint.
- Left Knee: In 2007, Mr. Taylor suffered significant and disabling knee pain in his left lower extremity. In light of this pain, on or about September 12, 2007, he presented to Branford Mitchell, MD, for evaluation and treatment of his left knee pain. This treatment included diagnostic studies showing moderately severe osteoarthritis of the left knee, and

injections, and prescriptions for pain and anti-inflammatory medicines, as well as a walker or cane. Additionally, he was diagnosed and treated for depression. Throughout 2007, and continuing into 2008, Mr. Taylor received treatment for chronic and severe left knee pain.

Prior Workers' Compensation Cases

Prior to sustaining the work injury of August 29, 2008, Mr. Taylor suffered several workers' compensation cases that resulted in him entering into settlement agreements, which involved stipulations of having suffered certain permanent disability. These prior workers' compensation cases include:

- Injury No. 05-024256: This file references an injury date of March 6, 2005. In resolving the underlying claim against the employer and insurer, Mr. Taylor entered into a Stipulation for Compromise Settlement for \$6,105.50 based upon him having sustained an approximate permanent partial disability of 5 percent to his left wrist (8.75 weeks), and an approximate permanent partial disability of 5 percent to his right wrist (8.75 weeks).
- Injury No. 05-102495: This file references an injury date of July 14, 2005. In resolving the underlying claim against the employer and insurer, Mr. Taylor entered into a Stipulation for Compromise Settlement for \$6,104.00 based upon him having sustained an approximate permanent partial disability of 5 percent to the body as a whole (20 weeks).

In resolving the underlying claim against the Second Injury Fund, Mr. Taylor entered into a Stipulation for Compromise Settlement for \$30,000.00. This settlement represented a compromise between the parties, premised on the understanding that Mr. Taylor was not working and was claiming permanent total disability against the Second Injury Fund. The settlement document notes that it was for permanent total disability, and was contingent on Mr. Taylor dismissing the claim filed against the Second Injury Fund in Injury No. 05-024256.

Accident

On August 28, 2008, while engaged in employment and performing his work duties with Penmac, Mr. Taylor suffered a work-related incident. This incident occurred as the employee, Lester Taylor, was working with a co-worker who was driving a bus and Mr. Taylor was sitting in the front seat. As this co-worker made a turn, he cut the corner too tightly and caused the bus to travel into a ditch or culvert. Mr. Taylor fell out of his seat and onto the floor. The driver continued to proceed uninterrupted to the destination. Upon arrival, Mr. Taylor got off the bus, and expressed concern that his feet had become numb and was experiencing pain in his low back.

An ambulance was called, and the attending paramedics treated Mr. Taylor initially for complaints of anxiety and tachypnea. He was subsequently transported to the emergency room of Cox Medical Center.

Medical Treatment

Mr. Taylor presented to the emergency room of Cox Medical Center with complaints of back pain with pain radiating down his legs, as well as shoulder, arm, and hand pain. The attending physicians prescribed diagnostic studies, which included x-rays and an MRI of the lumbar spine. In this regard, the chest X-ray was unremarkable, and the X-ray of the lumbar spine showed lumbar spondylosis with no acute abnormalities. The MRI scan of the lumbar spine did not reveal any acute abnormalities. The attending radiologist, Vito La Fata, M.D., propounded the following impression:

1. No acute bony or ligamentous injury.
2. L3 to S1 spondylosis described above, with probable annular fissure at each level. Mild subarticular thecal sac effacement at L3-4, greater on the right. Mild subarticular recess stenosis bilaterally at L4-5, greater than at L3-4. Mild bilateral foraminal narrowing at both levels.

The employer and insurer provided Mr. Taylor with follow-up care, which included treatment provided by Thomas Pirotte, M.D., and Ronald Pak, M.D. Initially, Mr. Taylor presented to Dr. Pirotte on September 2, 2008. During this examination, Dr. Pirotte notes that Mr. Taylor had a prescription from his pain specialist, Dr. Brooks, for the same medications” that Dr. Pirotte prescribed after his injury. In light of this examination, Dr. Pirotte prescribed physical therapy for Mr. Taylor, which resulted in Mr. Taylor receiving a referral to Peak Performance. Further, Dr. Pirotte permitted Mr. Taylor to return to work with restrictions.

On or about September 8, 2012, Mr. Taylor presented to Peak Performance for a physical therapy session. During this initial physical therapy evaluation Mr. Taylor stopped it; he “reported feeling lightheaded, “shaky”. The physical therapist noted that Mr. Taylor appeared to begin to hyperventilate, and then stated he “had to leave.”

On September 10, 2008, Mr. Taylor presented to Dr. Pak with complaints of pain in the right lumbosacral area and radiating into the right posterior thigh region. Notably, at the time of this exam, Mr. Taylor walked with a significant limp on the left, and utilized a cane to assist in walking; Mr. Taylor explained to him that he was suffering from left knee arthritis, and was using the cane as a means of assisting the difficulty in walking caused by the left knee arthritis. In light of the history provided to him, and based on his examination, Dr. Pak determined that Mr. Taylor was neurologically intact, and diagnosed him with right lumbosacral pain, which he attributed to a likely sprain/strain. Dr. Pak prescribed physical therapy, and restricted him from driving.

A review of Dr. Pak’s office note dated September 10, 2008, suggests that he was not aware of the prior visit with Dr. Pirotte or the attempted physical therapy session of September 8, 2010. In this regard, Dr. Pak does not reference the incident, but simply proposes a treatment plan wherein he propounds the following comment:

We are going to start a physical therapy program to start getting Mr. Taylor

mobilized and hopefully feeling better. He might benefit from an epidural as well, but I would like to start with just the physical therapy first and see how he does. We are going to continue keeping him restricted from driving. He is mostly at a sedentary level of physical functioning right now. We will see how he is doing in a few weeks.

On the following day, September 11, 2008, Mr. Taylor returned to Peak Performance for evaluation and treatment. In examining Mr. Taylor's medical history as part of the initial intake, the physical therapist notes that Mr. Taylor presents with multiple concerns, not necessarily related to the August 29, 2008 incident, and the reason for the physical therapy referral. In this context, the physical therapist notes that Mr. Taylor suffers from arthritis, and is in need of a left knee replacement.

In the course of undergoing this September 11, 2008, initial evaluation and treatment, Mr. Taylor began to show signs of "hyperventilating" and voice complaints of suffering severe headaches and cervical pain, as well as left-side facial numbness. In light of these presenting symptoms, the attending physical therapist stopped the treatment. Unable to drive himself home, a cab was called and Mr. Taylor cut-off the physical therapy session and departed for home by a cab. Apparently, Mr. Taylor did not return for and did not obtain any additional physical therapy.

On October 1, 2008, Mr. Taylor returned to see Dr. Pak for the scheduled follow-up evaluation and treatment. During this exam Dr. Pak noted that Mr. Taylor did not obtain the physical therapy as prescribed. In discussing his initial exam of Mr. Taylor, as well as his referring Mr. Taylor to Peak Performance for physical therapy, Dr. Pak noted the following:

He has chronic problems with his back and neck. Much of this stems from earlier injuries. His back pain was aggravated by a motor vehicle accident August 28, 2008. I really was not seeing anything in terms of neurologic impairment. Referred him for physical therapy. This did not happen for reasons that are unclear.

Also, it is noted in Dr. Pak's records that Mr. Taylor presented for this exam appearing anxious and agitated. In discussing this concern, Dr. Pak notes the following:

On exam, Lester is very anxious-appearing; he almost looks agitated. He is pacing around the room with his cane. After we talked for a while though he really calmed down quite a bit, and was very frank with me in stating that he seems to feel a lot better now. The neck pain and headaches have gone away. He wonders that he brings this on himself with his anxiety. I asked him if he had taken anything for his anxiety in the past, and apparently he had through his family doctor.

In discussing his examination findings of October 1, 2008, Dr. Pak notes that the examination revealed negative straight leg raise bilaterally; and Mr. Taylor demonstrated "excellent strength hip abduction, quads, tibialis anterior, gastroc soleus, ankle eversion." Also, Dr. Pak found that the MRI did not reveal any acute problems, and the physical examination did not indicate any sign of nerve compression. Further, in discussing his examination and findings with

Mr. Taylor, Dr. Pak explored with Mr. Taylor ways in which they could assist him in offering a treatment plan. Premised on a benign physical examination, this conversation resulted in Dr. Pak determining that he did not have any additional treatment to offer Mr. Taylor, and releasing Mr. Taylor from medical care with the determination that the August 29, 2008 accident did not cause Mr. Taylor to sustain any permanent impairment. In explaining this action, Dr. Pak propounds the following comments:

PLAN: I asked Lester frankly what we need to do to try to help him get along. He voices to me that he is very sincere in his desire to get back to work. He thinks that he would feel better if he could get back to his 15 hour a week driving job. He feels that he can do this effectively as before. Based on this desire and based on his benign physical examination, I am going to go ahead and release him back to his prior job driving 15 hours a week. I am also refilling his medications; however, I told him he cannot use anything like a pain pill or muscle relaxer when his is driving. This would just be something to use in the evening or at bedtime. He voices good understanding of this. I did prescribe hydrocodone b.i.d. p.r.n., diclofenac b.i.d. and cyclobenzaprine at bedtime. Again, he was taking medications even before this last accident. I also encouraged him to follow-up with his family doctor to see about getting on some medicine for anxiety. I think this will help him overall with his coping.

Beyond this, I really do not have any other new suggestions and am releasing him from care. I am not seeing any basis for assigning any new permanent impairment from his last accident.

Present Complaints

Mr. Taylor testified that he was treated at Cox Hospital North, and was referred to Dr. Ron Pak, a physiatrist, for further treatment. He saw Dr. Pak on a couple of occasions, and after the first visit Dr. Pak ordered physical therapy. He stated that he did not have the therapy because he had such anxiety with the pain he could not do the therapy. Further, Mr. Taylor acknowledged that Dr. Pak authorized him to return to work with restrictions, and he was offered light duty by the employer, but he could not get into the vehicle that Penmac sent for him to be transported to light duty. As a result, Mr. Taylor notes, he never participated in light duty, and has not worked since suffering the incident on August 29, 2008.

According to Mr. Taylor, he continued to have significant back pain, and developed significant weakness following the August 29, 2008 accident, which he denies having before 2008. Also, while he had been given a cane by the Veterans Administration prior to the accident, he says he did not use it much until after the August 29, 2008 accident; and now he requires a cane much of the time, although sometimes he does not use it. He believed the cane was originally prescribed for his knee, but now he must use it to get around. His legs do not work well and he has a lot of pain.

Mr. Taylor states that the employer cut him off from additional medical treatment, and he was forced to seek additional medical care on his own, which included a follow-up with Dr. Brooks, a pain doctor, who provided a number of injections in his back.

In describing his home environment, Mr. Taylor states that he lives in a three-story house, and lives downstairs because he cannot go up to the top floor because his legs will not work. He presently takes care of his four cats and cleans the cat box. He does not drive much, and he has only driven his truck 6 to 7 times since the accident. He presently takes medication including Tramadol and an arthritis medication that he has taken for 5 to 6 years. He states that he cannot participate in his former hobbies, which included fixing things and acting as a mechanic. His cats entertain him since he lives by himself, but he previously lived with his daughter.

On cross-examination, Mr. Taylor admitted that he suffered from back pain prior to the accident of August 29, 2008. In fact, he admitted that he had a MRI on his back in June of 2008, and an epidural steroid injection by Dr. Brooks in July 2008. Notably, this injection occurred six weeks before this accident. Similarly, Mr. Taylor admitted that he had gone to Dr. Brooks on August 18, 2008, just a week and half before this accident, and at this visit Dr. Brooks ordered physical therapy for him.

In discussing this treatment, Mr. Taylor indicated that he did not remember complaining of weakness at that time; and if he did, it may have been a different type of weakness than he is having now. Additionally, Mr. Taylor discussed the evaluation provided by Dr. Pak, and the difficulties or problems he experienced while undergoing the physical therapy prescribed by Dr. Pak. In this regard, Mr. Taylor admitted to suffering from an anxiety attack that prevented him from participating in the prescribed physical therapy. Further, he admitted to telling Dr. Pak that he wanted to get back to work, and felt he could do the job as he had done before the accident, which resulted in him being released by Dr. Pak in early October of 2008. Yet, Mr. Taylor states, he subsequently began to have more severe back pain, but did not ask Penmac to return him to the doctor after his release in October 2008.

In addition, Mr. Taylor admitted to a number of previous problems including prior hip problems where he complained of problems at the Veterans Administration in August of 2008. He admitted getting into an argument with the garbage delivery man in February 2008, although he denied remembering that he complained of "lightning pain" in his back. He stated that he might have had hip pain at the Veterans Administration in July of 2007, but states that pain may have been different from the pain he is having now.

Mr. Taylor testified that since suffering the August 29, 2008, accident, he has suffered a number of falls and admitted to a fall at Lowe's in February 2009 when he made complaints of leg and back pain and obtained emergency room treatment. He acknowledges that after this latter fall he began receiving physical therapy. He was also involved in falls that occurred in February 2010, August 2010, and a fall at Wal-Mart in March 2010, which made his pain worse.

Approximately two months prior to the work accident of August 29, 2008, Mr. Taylor notes that he saw Dr. Brooks, and he received a steroid injection from him for treatment of his complaints of pain. According to Mr. Taylor, these injections would work for a period of time and then the injections would wear off.

Finally, Mr. Taylor admitted to having problems with anger. In this regard, he notes that in April 2011 he was treated at the Veterans Administration after having been punched by a neighbor,

and subsequently experienced pain radiating down both legs into his tailbone. And he acknowledges that before the accident of August 29, 2008, he was on SSI before and after the work injury, and admitted being offered light duty by the employer. In explaining his failure to take advantage of the employer's offer of light duty work and being offered transportation by the employer, he states that he could not get into the van that was to take him to the light duty job because of his pain and discomfort.

Medical Opinions

P. Brent Koprivica, M.D.

P. Brent Koprivica, M.D., a physician practicing in the specialty of occupational medicine. Dr. Koprivica testified by deposition on behalf of the employee. Dr. Koprivica performed an independent medical examination of Mr. Taylor on two occasions, once in 2006 for a prior injury and again on March 6, 2009. At each examination, Dr. Koprivica took a history from Mr. Taylor, reviewed various medical records, and performed a physical examination of him.

Dr. Koprivica stated the injury he saw Mr. Taylor for in 2006 was for an injury that occurred in 1998, which required significant treatment that included some psychological treatment. He further noted Mr. Taylor's medical history that included a neck injury, which involved Mr. Taylor undergoing an anterior discectomy and fusion in February 2002. Dr. Koprivica recited Mr. Taylor's work history, the problems Mr. Taylor had with his neck, as well as the psychological problems of depression and posttraumatic stress disorder and somataform pain disorder. Notably, Dr. Koprivica believed all those conditions pre-existed the August 29, 2008 accident. He further recited an injury sustained by Mr. Taylor to his hand and wrists, which resulted in carpal tunnel syndrome.

In providing testimony in behalf of Mr. Taylor, which included medical opinions given prior to the 2008 work injury, Dr. Koprivica noted that it was his opinion in 2006 that Mr. Taylor's March 2005 injury, or his July 2005 injury, were not enough from a physical standpoint to result in total disability, but with his psychological disability, he believed Mr. Taylor was totally disabled at that time and prior to him sustaining the work accident of August 29, 2008. In providing a supplemental evaluation and opinion that gives consideration to the August 29, 2008 accident, Dr. Koprivica testified that he records a history of Mr. Taylor returning to work as a bus driver and suffering the injury of August 29, 2008. Following this incident, Mr. Taylor complained of increased neck and low back pain, and had temporary relief with steroid injections, but that he never fully recovered from the injury.

In light of his examination and evaluation, Dr. Koprivica opined that Mr. Taylor had suffered significant psychological overlay from these injuries, but his findings on his physical exam from 2006 to 2009 were similar. In his examination in 2006, he had psychological responses in his testing of his hands and wrists and manifestations of psychological disability. He relied more heavily on his work-up, and evaluations on his hands and wrists in 2006, but also found degenerative disease in both knees. Based on these evaluations, Dr. Koprivica opined that while Mr. Taylor is permanently and totally disabled, he is not permanently and totally disabled as a result of the August 29, 2008, accident, considered alone.

According to Dr. Koprivica, the accident of August 29, 2008, caused Mr. Taylor to sustain a permanent partial disability of 5 percent to the body as a whole. Dr. Koprivica further opines that the disability attributable to the accident of August 29, 2008, in combination with the preexisting disabilities, render Mr. Taylor permanently and totally disabled.

On cross-examination, Dr. Koprivica admitted that when he saw Mr. Taylor in March 2009, he felt that he was at maximum medical improvement physically for his injuries, but he did not address the psychological issues, and deferred to a mental health care expert. He further admitted that there really was no change in the objective testing he performed on his range of motion between October 2006 and March 2009. In this regard, Dr. Koprivica admitted that relative to the lumbar testing he found self-limitation. Although he thought there were some physical problems, these physical problems were minimal, and are the reason he only assigned or assessed a disability of 5 percent to the body as a whole attributable to the work injury of August 29, 2008.

In addition, Dr. Koprivica admitted that Mr. Taylor presented with similar complaints and problems prior to the August 2008 injury. Significantly, Dr. Koprivica acknowledges that the MRI report performed subsequent to August 29, 2008, does not show anything that could be a specific result of the August 2008 injury. And Dr. Koprivica states that he really had no objective evidence to base his assessment or rating of 5 percent, other than the described mechanism of injury and complaints provided by Mr. Taylor. Moreover, Dr. Koprivica opines that the overwhelming disability governing Mr. Taylor pre-dates the August of 2008 injury, and agrees that the second evaluation he performed of Mr. Taylor for the August 29, 2008 accident provided no objective evidence of Mr. Taylor having sustained a new injury.

Finally, Dr. Koprivica acknowledges that the restrictions he prescribed for Mr. Taylor in 2009 are identical to the restrictions that he prescribed for Mr. Taylor in 2006. Dr. Koprivica similarly admits that he did not identify an industrial disability for his low back in 2006, but that if he had the additional information now being presented to him, he might have apportioned additional disability to Mr. Taylor's low back, relative to his condition prior to August 29, 2008.

Ronald Pak, M.D.

Ronald Pak, M.D., a physician practicing in the specialty of physical medicine and rehabilitation, testified by deposition on behalf of the employer and insurer. The employer and insurer selected Dr. Pak as a treating physician for treatment relating to the work incident of August 29, 2008. Dr. Pak provided treatment, and examined Mr. Taylor on September 10, 2008 and October 1, 2008. In light of these examinations, and premised on him finding no acute injury and no disability, as well as being told by Mr. Taylor that he would feel better if he could get back to his 15 hour a week driving job, which he thought he could do it as effectively as he did before, Dr. Pak released Mr. Taylor from medical treatment. In explaining this decision, Dr. Pak notes that he had no basis to assign or conclude that the accident of August 29, 2008 caused Mr. Taylor to sustain any additional impairment or permanent disability. Further, in noting that Mr. Taylor presented with significant prior disability for which he was engaged in active treatment, Dr. Pak directed Mr. Taylor to follow-up with his family physician.

Jeffrey Woodward, M.D.

Jeffrey Woodward, M.D., a physician practicing in the specialty of physical medicine and rehabilitation, testified by deposition on behalf of the employer and insurer. Dr. Woodward performed an independent medical examination of Mr. Taylor on November 15, 2011. At the time of this examination, Dr. Woodward took a history from Mr. Taylor, reviewed various medical records, and performed a physical examination of him. In light of his examination and evaluation of Mr. Taylor, Dr. Woodward opined that the accident of August 29, 2008 did not cause Mr. Taylor to sustain any permanent disability. In discussing this opinion, Dr. Woodward notes that the August 29, 2008 work incident did not cause Mr. Taylor to present with any objective physical injury; the symptomology presented by Mr. Taylor relates exclusively to the significant pre-existing spine abnormalities and symptoms.

Further, Dr. Woodward notes that the MRI taken on August 29, 2008, showed diffused degenerative disc and facet joint disease, but no acute traumatic spine abnormalities. And in comparing the differing MRI diagnostic studies, Dr. Woodward notes that he reviewed the films and reports from the MRI of June 14, 2008, a month and half prior to the work injury, and the MRI of August 29, 2008, and found no changes in pathology that could be directly related to the injury of August 29, 2008. Similarly, he reviewed Dr. Brooks' records, the chronic pain specialist who saw Mr. Taylor before and after the accident. Dr. Woodward did not believe that any of these records, and the treatment provided by Dr. Brooks, provides justification to change his opinion. Nor do these records reveal any objective finding to correlate Mr. Taylor's presenting symptoms with the August 2008 injury.

In addition, Dr. Woodward testified that he believed Mr. Taylor suffers from a type of progressive neuro muscular condition, which demonstrated marked weakness in his hip and thigh muscles with bi-lateral foot numbness. This contributes to Mr. Taylor's presenting symptoms, and is not causally related to the work incident of August 29, 2008.

Preeminently, Dr. Woodward opines that Mr. Taylor is not governed by any work restrictions directly related to the injury of August 2008; and Mr. Taylor has suffered no permanent partial disability relative to the injury of August 2008. Dr. Woodward further opines that while Mr. Taylor presents with significant pre-existing spine and lower extremity abnormalities, there is no objective finding to conclude that the August 29, 2008 incident has caused Mr. Taylor to suffer a physical injury resulting in any permanent disability.

Dr. Woodward testified on cross-examination that he could differentiate what is attributable to an accident and pre-existing conditions because he uses objective evidence above subjective information. He relied significantly for the low back on the lumbar MRI findings, as well as the medical records.

Dale Halfaker, Ph. D.

Dale Halfaker, Ph.D., a neuropsychologist in Springfield, Missouri, provided testimony through the submission of his psychological evaluation report. Notably, at the request of Mr. Taylor's attorney, Dr. Halfaker evaluated Mr. Taylor on August 31, 2010, and prepared a

comprehensive 57 page report. For purposes of this award, it is clear that Dr. Halfaker, after much evaluation and discussion, believed that Mr. Taylor presented with a permanent partial psychological disability of 15 percent to the body as a whole. And he apportions this entire disability to the significant pre-existing conditions that were present prior to the injury of August 29, 2008.

In rendering his psychological opinion, Dr. Halfaker notes that this disability is associated with Mr. Taylor's history of major depression disorder and generalized anxiety disorder. Dr. Halfaker believed that the accident of August 29, 2008 did not serve as the prevailing factor in causing any of the conditions that he diagnosed, and he did not believe that there was any additional treatment warranted on the basis of the August 29, 2008 incident. Simply stated, according to Dr. Halfaker, the accident of August 29, 2008 did not cause Mr. Taylor to sustain any psychological disability.

Vocational Opinions

James England, CRC

James England is a vocational expert working in St. Louis, Missouri. Mr. England testified by deposition in behalf of the Second Injury Fund. Mr. England did not personally evaluate or meet Mr. Taylor, but performed a vocational evaluation of Mr. Taylor through review of the medical records, review of physicians' reports and/or depositions, and review of deposition testimony given by Mr. Taylor. In light of this evaluation, Mr. England opines that Mr. Taylor is employable in the open and competitive labor market, which would be true even absent the effects of the primary injury.

Notably, Mr. England agrees with Dr. Koprivica that Mr. Taylor seemed to have, even back in 2006, an inability to sustain employment, primarily due to the psychiatric diagnosis. And Mr. Taylor was rendered disabled absent any degree of the physical issues. On cross-examination, Mr. England indicated that after the evaluation by Dr. Koprivica in 2006, he did not see that Mr. Taylor had ever returned to full-time employment. In this regard, Mr. England stated that working 15 hours a week for Penmac was not considered full-time employment, or indicative of being employable in the open and competitive labor market full time.

FINDINGS AND CONCLUSIONS

The workers' compensation law for the State of Missouri underwent substantial change on or about August 28, 2005. The burden of establishing any affirmative defense is on the employer. The burden of proving an entitlement to compensation is on the employee, Section 287.808 RSMo. Administrative Law Judges and the Labor and Industrial Relations Commission shall weigh the evidence impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts, and are to construe strictly the provisions, Section 287.800 RSMo.

I. Accident & Injury

On August 29, 2008, while engaged in employment and performing his work duties with Penmac, Mr. Taylor suffered a work-related incident. This incident occurred as the employee, Lester Taylor, was working with a co-worker who was driving a bus and Mr. Taylor was sitting in the front seat. As this co-worker made a turn, he cut the corner too tightly and caused the bus to travel into a ditch or culvert. Mr. Taylor fell out of his seat and onto the floor. The driver continued to proceed uninterrupted to the destination. Upon arrival, Mr. Taylor got off the bus and expressed concern that his feet had become numb and was experiencing pain in his low back.

Mr. Taylor asserts that August 29, 2008, accident caused him to sustain a soft tissue injury to his lumbar spine. The employer and insurer, as well as the Second Injury Fund, do not necessarily dispute or contest the assertion that Mr. Taylor sustained a soft tissue injury to his low back, but assert that this incident did not cause Mr. Taylor to sustain any permanent disability.

II. Permanent Disability Compensation

Subsequent to suffering the August 29, 2008 incident, Mr. Taylor obtained certain medical treatment, which included diagnostic studies and treatment with Ronald Pak, M.D., a physician practicing in the specialty of physical medicine and rehabilitation. In providing this initial treatment, Dr. Pak determined that the August 29, 2008 incident did not cause Mr. Taylor to sustain an acute injury, and ultimately concluded that the incident did not cause Mr. Taylor to suffer any permanent disability. Notably, in explaining this decision, Dr. Pak notes that he had no basis to assign or conclude that the accident of August 29, 2008, caused Mr. Taylor to sustain any additional impairment or permanent disability. Further, in noting that Mr. Taylor continued to present with certain symptomology, Dr. Pak opined that the presenting complaints voiced by Mr. Taylor related to significant prior disability for which Mr. Taylor was engaged in active treatment prior to the August 29, 2008, incident.

Jeffrey Woodward, M.D., a physician practicing in the specialty of physical medicine and rehabilitation, offers medical opinion similar to Dr. Pak. In light of his examination and evaluation of Mr. Taylor, Dr. Woodward opines that the accident of August 29, 2008 did not cause Mr. Taylor to sustain any permanent disability. In discussing this opinion, Dr. Woodward notes that the August 29, 2008 work incident did not cause Mr. Taylor to present with any objective physical injury; the symptomology presented by Mr. Taylor relates exclusively to the significant pre-existing spine abnormalities and symptoms.

Further, Dr. Woodward notes that the MRI taken on August 29, 2008, showed diffused degenerative disc and facet joint disease, but no acute traumatic spine abnormalities. And in comparing the differing MRI diagnostic studies, Dr. Woodward notes that he reviewed the films and reports from the MRI of June 14, 2008, a month and half prior to the work injury, and the MRI of August 29, 2008, and found no changes in pathology that could be directly related to the injury of August 29, 2008. Similarly, he reviewed Dr. Brooks' records, the chronic pain specialist who saw Mr. Taylor before and after the accident. Dr. Woodward did not believe that any of these records, and the treatment provided by Dr. Brooks, provides justification to change his opinion. Nor do these

records reveal any objective finding to correlate Mr. Taylor's presenting symptoms with the August 2008 injury.

Yet, it is clear that Mr. Taylor believes the August 29, 2008 accident caused him to suffer significant disability to his low back. However, in comparing Mr. Taylor's testimony of complaints of pain and symptomology before and after the accident, there simply does not seem to be any new or any objective evidence of any significant disability. It is significant that a month and half prior to the August 29, 2008 injury Mr. Taylor received an epidural steroid injection in his low back for low back pain, and he continued to present with these complaints without resolution. Notably, in comparing the MRI taken in June 2008 with the MRI taken shortly after the accident demonstrates no significant change, and is most compelling evidence of lack of objective signs of permanent disability related to the August 2008 injury. According to the physicians, there was no change in the pathology between those two diagnostic studies.

Further, it is uncontroverted that prior to the August 29, 2008 incident, Mr. Taylor presented with significant and severely disabling conditions, and was receiving medical treatment for these conditions. Approximately 10 days prior to the work incident, Mr. Taylor sought and obtained treatment with his personal physician, Dr. Brooks; the office note of Dr. Brooks, dated August 18, 2008 indicates that the epidural injection had provided Mr. Taylor with certain relief, but he continued to present with complaints of weakness, resulting in Dr. Brooks' prescribing or recommending physical therapy. It is this "complaint of weakness" that Mr. Taylor continues to voice complaints today. Indeed, all of Mr. Taylor's presenting symptoms, including low back pain, neck pain, and weakness issues, reflect symptoms and complaints of pain voiced by Mr. Taylor prior to August 29, 2008.

Even Mr. Taylor's own physician, Dr. Koprivica, recognizes that prior to August 29, 2008, Mr. Taylor presented with significant preexisting disability. And in his examination of Mr. Taylor found that the August 29, 2008 incident did not cause Mr. Taylor to present with or suffer any objective signs of having sustained any permanent disability referable to this incident. However, to the extent Dr. Koprivica opines that this work incident caused Mr. Taylor to sustain certain permanent disability, and thus offers medical opinion different from Dr. Pak and Dr. Woodward, I resolve these differences in favor of Drs. Pak and Woodward, who I find credible, reliable and worthy of belief.

Finally, it is noted that much of Mr. Taylor's presenting complaints of pain and symptomology relate not to a physical condition or disability. Rather, Mr. Taylor's presenting complaints of pain and symptomology are causally related to a mental condition and his perception of disability. In this regard, Dale Halfaker, Ph.D., a neuropsychologist in Springfield, Missouri, and secured by Mr. Taylor, opines that Mr. Taylor presents with a permanent partial psychological disability of 15 percent to the body as a whole. And he apportions this entire disability to the significant pre-existing conditions that were present prior to the injury of August 29, 2008.

In rendering his psychological opinion, Dr. Halfaker notes that this disability is associated with Mr. Taylor's history of major depression disorder and generalized anxiety disorder. Dr. Halfaker believed that the accident of August 29, 2008 did not serve as the prevailing factor in causing any of the conditions that he diagnosed, and he did not believe that there was any additional treatment warranted on the basis of the August 29, 2008 incident. Simply stated, according to Dr.

Halfaker, the accident of August 29, 2008 did not cause Mr. Taylor to sustain any psychological disability.

In light of the foregoing, and after consideration and review of the evidence, I find and conclude that the accident of August 29, 2008 did not cause the employee, Lester Taylor, to sustain any permanent disability.

III. Medical Care

The evidence is not supportive of a finding that the employee's claim for medical expenses is causally related to the August 29, 2008 accident. Nor is the evidence supportive of a finding that the employee is entitled to additional or future medical care in order to cure and relieve him from the effects of the August 29, 2008 accident.

The very treatment and complaints that claimant is making now, as indicated previously, were existing shortly before this accident. Mr. Taylor obtained a steroid injection prior to the work incident by Dr. Brooks in June 2008, and later obtained subsequent injections by Dr. Brooks. Dr. Brooks does not causally relate the necessity of this treatment to the August 29, 2008 accident. Further, to the extent Mr. Taylor sustained an injury as a consequence of this August 29, 2008 incident, the injury resulting from this incident was of a transient nature that resolved without necessity of requiring Mr. Taylor to need additional medical care beyond that provided by the employer and insurer.

Accordingly, after consideration and review of the evidence, I find and conclude that the employee failed to sustain his burden of proof. The claim for past medical expenses, as well as additional or future medical care, is denied.

IV. Temporary Total Disability Compensation

The evidence is not supportive of a finding that the employee suffered any temporary total disability and is entitled to temporary total disability compensation as a consequence of the August 29, 2008 accident. Notably, subsequent to suffering this work incident, the employer offered to Mr. Taylor the opportunity to perform light duty work consistent with the recommendations and medical prescriptions of the treating physicians. Mr. Taylor, however, elected to not accept or work in this light duty employment.

In addition, there is no medical evidence to support Mr. Taylor's self-perceived inability to utilize light or restricted duty work. And by October 1, 2008, Mr. Taylor was ready, according to Dr. Pak, to return to work, premised on the belief that Mr. Taylor could do the job as effectively as before the incident.

Accordingly, after consideration and review of the evidence, I find and conclude that the employee failed to sustain his burden of proof. The claim for temporary total disability compensation is denied.

V.
Liability of Second Injury Fund

In order for the Second Injury Fund to have any liability to an employee under §287.220.1, he must have a “pre-existing permanent partial disability” which combines with a “subsequent compensable injury resulting in additional permanent partial disability” to create a greater disability than the simple sum. In this case, the accident of August 29, 2008 did not cause Mr. Taylor to sustain any permanent disability. Therefore, there can be no Second Injury Fund liability.

Accordingly, after consideration and review of the evidence, I find and conclude that the employee failed to sustain his burden of proof. The Claim for Compensation as filed against the Second Injury Fund is denied.

VI.
Attorney Lien

The employee’s former attorney, E. Joseph Hosmer, Esq., has filed an attorney’s lien. This lien is for attorney’s expenses in the amount of \$1,638.58. However, insofar as the adjudication of this claim awards no compensation, including medical expenses, the lien is denied.

Made by: _____
L. Timothy Wilson
Administrative Law Judge
Division of Workers' Compensation